

This letter distinguishes retailers of motor fuel from distributors, receivers, and suppliers. See 35 ILCS 505/1 et seq. and 86 Ill. Adm. Code Part 500. (This is a GIL).

October 27, 2000

Dear Ms. Xxxxx:

This letter is in response to your letter dated August 22, 2000. Your letter has been forwarded to the Legal Services Office for response. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

Background:

August 10, 2000, XXXX bought COMPANY assets and called their new company BUSINESSSS. All COMPANY licenses were canceled as of August 10, 2000. COMPANY no longer exists. BUSINESSSS is a reseller of motor fuel.

The questions are:

Can TAXPAYER sell motor fuels (gasoline, clear diesel, dyed diesel, and K1/1K) to BUSINESSSS who is reseller of motor fuels, without BUSINESSSS having an Illinois Distributor, Supplier, or Receiver license?

Can BUSINESSSS, a reseller of motor fuels (gasoline, clear diesel, dyed diesel, and K1/1K) in Illinois, resell motor fuels (gasoline, clear diesel, dyed diesel, and K1/1K) without a license?

Information gathered to date:

PERSON2 of the IL Dept. of Revenue faxed a letter to BUSINESSSS stating that BUSINESSSS can sell motor fuels in Illinois without a Distributor, Supplier, or Receiver License. (See attached.)

Per my conversation with PERSON3 on August 22, 2000, TAXPAYER can sell to BUSINESSSS without BUSINESSSS having an Illinois motor fuel license as long as we only sold them gasoline and clear diesel and charged them all the taxes. However, PERSON3 said TAXPAYER could not sell BUSINESSSS dyed diesel. PERSON said that BUSINESSSS could sell motor fuel without an Illinois motor fuel license as long as they charged their customers all the taxes. However, they can not sell to an exempt customer nor are they allowed to sell dyed diesel.

Further questioning:

The reasons why I am further questioning PERSON2's and PERSON3's statements are that prior to January 1, 2000, no one in the State of Illinois could resell motor fuel in Illinois without some type of IL motor fuel license. No where have I read in the changes as of January 1, 2000 where it states that this has been repealed.

If a reseller were allowed to resell fuel in the State of Illinois without a license then how would you track whom they are selling to and if they are exporting the fuel?

Further, a supplier can not be responsible for the actions of another. TAXPAYER can not know whom BUSINESSSS decides to sell to. All we know is that they are in fact in the business of reselling motor fuels in the State of Illinois. Why would there be a restriction on selling dyed diesel to BUSINESSSS providing that the above statements from PERSON2 and PERSON3 are correct?

On what basis would we have to restrict the selling of dyed diesel, which is a non-taxable product no matter who you sell it to?

I wish to clarify Illinois' position regarding this so that TAXPAYER can follow what the Illinois laws states. As it is, I feel there is conflicting information and do not understand how Illinois once stood firm on a policy of Motor Fuel Licensing for all resellers and then suddenly anyone without a license is allowed to resell fuel as long as we charge tax?

The Current situation:

Currently BUSINESSSS has a letter from the State of Illinois stating that they can resell motor fuel without a license. They feel it is unfair of TAXPAYER to hold their deliveries seen as they have this letter. I do not feel that TAXPAYER has a clear explanation from the State of Illinois regarding TAXPAYER position in this situation, therefore, we are not selling to BUSINESSSS until this matter is clarified. I would appreciate a quick response from you regarding this matter seen as there is a customer's business at stake.

The Motor Fuel Tax Law is set forth in Chapter 35 of the Illinois Compiled Statutes, Section 505/1 and following. We have enclosed portions of the administrative regulations for the Motor Fuel Tax, which are set forth at 86 Illinois Administrative Code Part 500. In particular, you may wish to review Section 500.100 which includes the definitions for distributor, receiver, and supplier of motor fuel and also Section 500.201 which explains the licensing requirements.

If a business is purchasing motor fuel in Illinois and selling it in Illinois in the same form in which it purchased the motor fuel (i.e. without any production, refining, blending, compounding or manufacturing of its own), it may qualify as a retailer, only. In that case, it would need to be registered as a retailer in Illinois. However, if such a business is engaged in production, refining,

blending, compounding or manufacturing fuel in this State, or any other qualifying activities, it may be a distributor, receiver, or supplier. As you will see pursuant to Section 500.201, distributors, receivers and suppliers of motor fuel in Illinois must be licensed.

A distributor may sell tax paid motor fuel (e.g., this does not include dyed diesel fuel) to businesses that are not distributors, receivers or suppliers as long as the distributor collects the appropriate prepaid sales tax and motor fuel tax. Likewise, businesses that are not distributors, receivers, or suppliers may sell tax paid motor fuel (e.g., this does not include dyed diesel fuel) without being a distributor, receiver, or supplier as long as they have paid the appropriate prepaid sales tax and motor fuel tax to their vendor. They cannot make sales of nontaxable motor fuel such as dyed diesel fuel.

Please note, these policies are not new with the dyed diesel legislation that went into effect in January 1, 2000.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Martha P. Mote
Associate Counsel

MPM:msk
Enc.